HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 421 OF 2004

1. Soma Dattaram Raut, r/o Sal
Bicholim Taluka, Goa, since
expired, through his heirs
and legal representatives :

i) Smt. Ramabai Soma Raut,
ii) Smt. Shubhangi Digambar Parab,
iii) Shri Digamber Rajaram Parab,
iv) Smt. Aparna Umakant Rane,
v) Shri Umakant Pandurang Rane,
vi)Smt. Saraswati Sagun Palyekar,
vii)Shri Sagun Kirshna Palyekar,
viii)Smt. Taraka Uday Sawant,
ix) Shri Uday Gopichand Sawant,
x) Smt. Usha Naguesh Kamat,
xi) Naguesh Pandharinath Kamat,
xii)Shri Ramakant Soma Raut,
xiii)Smt. Laxmi Ramakant Raut,
xiv)Smt. Kashibai Dattaram Raut,
xv) Miss Ujwal Soma Raut,
xvi)Shri Shekhar Soma Raut,
xvii)Shri Rajesh Soma Raut,
xviii)Miss Sampurna Soma Raut,
all r/o Varacha Wada- Sal,
Bicholim Taluka, Goa, all
through their Power of
Attorney Shri Dattaram Soma
Raut, r/o Sal, Bicholim
Taluka, Goa,

2. Shri Sitaram Naravan Raut,
r/o Sal, Bicholim, Goa
(since deceased) represented
by his heirs and legal
represented by:

1. Subhash Sitaram Raut,
major,
2. Mrs. Asha Subhash Raut,

housewife,
3. Smt. Nalini Premnath Raut,
4. Prasad Premnath Raut,
5. Mr. Prashant Premnath Raut,
6. Parinha Premanath Raut,
7. Mr. Gurunath Umakant
Sitaram Raut (expired),
8. Mrs. Urmila Umakant Raut,
all r/o at Varchawada, Sal,
House No.223, Assornora,Goa,
9. Smt. Sunanda Laximan
Sawant,
10. Mr. Girish Laximan
Sawant,
11. Mr. Naresh Laximan Sawant,
12. Mr. Uday Laximan Sawant,
13. Miss Kaya Laximan Sawant,
14. Miss Chhaya Laximan Sawant,
15. Miss Maya Laximan Sawant,
r/o Soccoro, Porvoim,
Bardez, Goa,
16. Mr. Atmaram Laximan Rane,
17. Mrs. Surekha Atmaram Rane,
r/o Huddawadi Reddy,
Sawantwadi,
18. Mr. Arun Atmaram
Gawadalkar,
19. Mrs. Vimal Arun Gawandalkar,
r/o Baswant Galli,
Shahpur, Belgaum,
L.Rs. of plaintiff no.2(7)/l.rs. of
petitioner no.2(7),

2.(7) (i)Urmila Gurunath Raut,
w/o late Gurunath Sitaram
Raut, who is already on
record as petitioner no.2(8),

2(7)(ii)Shri Ugam Gurunath Raut,
major, r/o Sal, Bicholim,
Goa, and

3. Shri Raghunath Vishnu Raut,

major in age, agriculturist,
r/o Sal, Bicholim, Goa. ... Petitioners

Versus

1. Shri Dhaktu Babu Raut,
s/o late Babu Ratu,
aged about 60 years, r/o
Madhlawada, Sal,
Bicholim Taluka, Goa,

2. Shri Manohar Ganesh Raut,
s/o Ganesh Raut, aged 30 years,
r/o Madhlawada, Sal,
Bicholim, Goa,

3. Shri Laximan Ganesh Raut,
s/o Ganesh Raut, aged 45
years, r/o Madhlawada, Sal,
Bicholim, Goa, and

4. Shridhar Dhaktu Raut, s/o
Dhaktu Babu Raut, aged
about 30years, r/o
Madhlawada, Sal, Bicholim,
Goa. ... Respondents.

Ms. S. Naik, advocate for the petitioners.

Ms. Melissa Conception, advocate for the respondents.

CORAM : A. P. LAVANDE, J.

DATE : 27th April, 2005.

ORAL JUDGMENT

Rule. By consent heard forthwith.

2. By this petition the petitioners challenge the Order dated 18th August, 2004, passed by the IInd Addl. District Judge,

Panaji, in Civil Miscellaneous Application No.97 of 2004, dismissing an application seeking condonation of delay of 23 days in filing first appeal against the judgment and decree dated 28th February, 2003, passed in Regular Civil Suit no.54/93/B. Ms. Naik, learned counsel appearing for the petitioner, submitted that the petitioners who were the appellants before the lower Appellate Court, had made out sufficient cause for condoning the delay and that the lower Appellate Court exercised jurisdiction illegally and contrary to the settled principles laid down by the Apex Court concerning the approach of the Court in condonation of delay applications. According to the learned counsel, the lower Appellate Court ought to have condoned the delay of 23 days in filing the appeal and by not condoning the delay serious prejudice has been caused to the petitioners.

2. Ms. Conception, learned counsel appearing for the respondents, submitted that the respondents will have no objection if the delay in filing the appeal before the lower Appellate Court is condoned, subject to the payment of costs.

3. It is now well-settled that the jurisdiction to condone the delay has to be liberally exercised as has been held by the Apex Court in a catena of decisions. The learned counsel appearing for the respondents has also fairly submitted that the respondents would have no objection if the delay is condoned, subject to payment of costs. I

also find that there is sufficient cause for condoning the delay.

4. Accordingly, the petition is allowed. Delay of 23 days in filing the appeal before the lower Appellate Court is condoned, subject to the payment of costs of Rs.l,500/- (rupees one thousand five hundred only) in the District Court at Panaji. The costs shall be deposited within a period of six weeks from today. After the costs are deposited, liberty to the respondents to withdraw the same.

5. Rule is made absolute in the aforesaid terms.

A. P. LAVANDE, J.

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